

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-314 of 2015 (O&M)
Date of Decision: 20.11.2017

Sukhwinder Kaur Chahal

. . . Appellant

Versus

Pritam Singh Chahal

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Navjot Singh, Advocate
for the appellant.

Mr. Sherry K. Singla, Advocate
for the respondent.

M.M.S. Bedi, J. (Oral)

Appeal has been taken up for hearing on merits.

During the course of arguments, it transpires that both the parties are residing abroad since 2006. Two children born out of the wedlock, after attaining maturity, have been married by the appellant-wife.

This is the appeal preferred by the appellant-wife aggrieved against the judgment and decree dated 03.04.2015 vide which respondent-husband has been granted *ex parte* divorce by the Court of Additional District Judge, Sangrur.

FAO-M No.314 of 2015 (O&M)

Perusal of the record, in the case, reveals that the respondent-husband had impleaded the appellant-wife as respondent in the petition under Section 13 of the Hindu Marriage Act, 1955 by mentioning the following address:-

“ Sukhwinder Kaur wife of Pritam Singh Chahal son of Bant Singh, resident of village Kanganwal, Tehsil Malerkotla, District Sangrur now residing with Willian Jeet son of Pritam Singh, resident of 2155, Sidori AVE Abbots Ford, B.C. Z2T 5J8 Canada”.

The notice was sent to the respondent-wife through registered cover for 10.12.2014 on 21.10.2014. The learned Additional District Judge, Sangrur, Mr. Sandeep Kumar Singla, passed the following order on 10.12.2014:-

“RC not received back. Statutory period of 30 days has elapsed. Respondent is presumed to be duly-served. Case called many time since morning, but no one has appeared for respondent. She is proceeded against ex parte. Now for ex parte evidence of petitioner to come up on 14.01.2015.”

Thereafter, the case was adjourned for *ex parte* evidence for seven dates of hearing. The *ex parte* decree of divorce was granted to the respondent on 03.04.2015.

Aggrieved by the *ex parte* decree of divorce, the appellant-wife has preferred the present appeal mainly on the ground that the decree of divorce has been obtained by playing fraud with the Court as well as on the appellant-wife as wrong address had been given by mentioning the number of the house as ‘2155’ whereas her actual address of the

FAO-M No.314 of 2015 (O&M)

appellant-wife in Canada 'is 2955, Sidoni AVE Abbots Ford, B.C. V2T 5J8'.

When required to establish the actual address, the counsel for the appellant relies upon the health card issued by the Government of British Columbia (Annexure P-1), wherein the number of the house is mentioned as '2955' instead of '2155'. Had respondent mentioned the correct house number, the presumption of service of registered notice could have been availed of by the respondent-husband, but in case a registered notice sent on a wrong address is not received back, no legal presumption of addressee can be inferred.

We are of the considered opinion that the statutory presumption of service by the trial Court pursuant to the attempt under Section 25 C.P.C. would not arise regarding the service, in the present case. Attempt has been made to proceed the appellant-wife against *ex parte* on 10.12.2014. The order dated 10.12.2014, mentioned hereinabove, proceeding respondent *ex parte* deserves to be set aside as the appellant-wife cannot be said to have been served to her correct address.

Counsel for the respondent-husband has vehemently contended that in the memo of parties address of the appellant-wife has been mentioned as 2155, Sidor Ave, Abbotsford, Vancouver, Canada.

Counsel for the appellant has explained that the correct address as 2955, Sidoni AVE, ABBOTSFORD, B.C. V2T 5J8 was mentioned in the memo of parties originally, but on account of bringing memo of parties by matching the address before the lower Court, it was inadvertently mentioned as 2155 from 2955. However, it will not make

FAO-M No.314 of 2015 (O&M)

any difference that the appellant-wife was not served at any address during the pendency of the appeal. The appellant has taken a specific ground that during the period she was not residing on 2155 Sidori AVE Abbots Ford, B.C. Z2T 5J8 Canada the address furnished before the lower Court.

In view of the above facts and circumstance, the *ex parte* judgment and decree dated 03.04.2015 deserves to be set aside merely on account of the fact that the appellant had not been served at the correct address and *ex parte* order against her was obtained in erroneous and fraudulent manner by wrongly mentioning the address in the memo of parties before the lower Court.

No opinion is expressed on merits, as it will only to be established by both the parties by leading evidence whether the plea of cruelty has been established or not.

The appeal is allowed and the *ex parte* judgment and decree dated 03.04.2015 granting *ex parte* decree of divorce to the respondent-husband is hereby set aside.

In the interest of justice, parties are directed to appear before the trial Court, through their representative/counsel, on 16.12.2017. Parties will appear before the District Judge, Sangrur on 16.12.2017. The case will be taken up for further proceedings with effect from 10.12.2014, treating the *ex pare* proceedings dated 10.12.2014, having been set aside by this Court. It will be appreciated in case the appellant-wife is ready with the written statement to be filed before the trial Court on that date itself. It will be open to the District Judge, Sangrur to keep the

FAO-M No.314 of 2015 (O&M)

proceedings before him or to entrust the case to the Court of competent jurisdiction.

It is also made clear that it will not be necessary for the trial Court to intimate the parties regarding the date of hearing as the order has been pronounced in their presence specifically intimating them the next date of hearing before the District Judge, Sangrur.

Copy of the order be sent to the said Court forthwith. Since only photocopy of the trial Court record has been received by this Court, the original file would be requisitioned from the record room for proceedings further in the matter from the stage with effect from 10.12.2014.

[M.M.S. BEDI]
JUDGE

[AUGUSTINE GEORGE MASIHI]
JUDGE

November 20, 2017
sachin

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No